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Chambers of Vincent L. Briccetti

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 MALCOLM Pitt, :
 Plaintiff, :
 v. :
 :
 ROCKLAND COUNTY; SERGEANT :
 OBLENIS; SERGEANT LOWE; CORRECTION :
 OFFICER KARNEY; CORRECTION OFFICER :
 G. VANDUNK; OFFICER FIGUEROA, :
 OFFICER SPENCE, :
 Defendants. :
 -----x

ORDER

22 CV 8356 (VB)

6/14/23

On May 1, 2023, defendants moved to dismiss the first amended complaint. (Doc. #29). Defendants did not submit any exhibits in support of this motion beyond plaintiff's first amended complaint. (Doc. #30-1).

On May 2, 2023, the Court issued an Order directing plaintiff, proceeding pro se and in forma pauperis, to file a response to the motion to dismiss by May 30, 2023, and defendants to file a reply, if any, by June 13, 2023. (Doc. #33).

On May 8, 2023, the Court received a letter dated May 5, 2023, from plaintiff informing the Court that he had been moved to Franklin Correctional Facility. (Doc. #36). Accordingly, by Order dated May 10, 2023, the Court (i) directed defense counsel to re-serve plaintiff with the motion to dismiss; and (ii) sua sponte extended plaintiff's deadline to respond to the motion to dismiss to June 13, 2023, and defendants' deadline to file a reply, if any, to June 27, 2023. (Doc. #37).

On June 12, 2023, the Court received plaintiff's (i) application for the appointment of pro bono counsel dated June 5, 2023 (Doc. #39), and (ii) plaintiff's opposition to the motion to dismiss. (Doc. #40). In his opposition, plaintiff requests discovery materials, including discovery documents related to the disciplinary history of Darius Williams (who is not a party to this action), grievances related to an incident that occurred on July 22, 2022, and video footage of defendants Lowe and Vandunk, as well as video footage of Williams purportedly assaulting plaintiff. (Id.).

Accordingly, it is hereby ORDERED:

1. The Court has considered the type and complexity of this case, the merits of plaintiff's claims, and plaintiff's ability to present the case. The Court, in its discretion, does not find exceptional circumstances in plaintiff's case warranting the appointment of counsel at this time. See 28 U.S.C. § 1915(e)(1); Cooper v. A. Sargent Co., 877 F.2d 170, 172 (2d Cir. 1989). Accordingly, plaintiff's request for the appointment of counsel is DENIED WITHOUT PREJUDICE for renewal at an appropriate time in the future.

2. The Court will not convert the pending motion to dismiss into a motion for summary judgment. Therefore, in deciding the motion, the Court will not rely on any extraneous documents unless they are attached to the first amended complaint, incorporated by reference in the first amended complaint, or integral to the first amended complaint. See DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010). Because plaintiff is proceeding pro se, the Court will consider exhibits attached to plaintiff's opposition to the extent they are consistent with the allegations and claims raised in the first amended complaint. See Vlad-Berindan v. MTA N.Y.C. Transit, 2014 WL 6982929, at *6 (S.D.N.Y. Dec. 10, 2014).

3. Plaintiff's request for discovery at this time is DENIED. If the Court denies defendants' motion, plaintiff will be permitted to request relevant documents and evidence during discovery.

4. Defendants' reply, if any, remains due June 27, 2023.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppededge v. United States, 369 U.S. 438, 444–45 (1962).

The Clerk is instructed to terminate plaintiff's application for the appointment of pro bono counsel. (Doc. #39).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: June 14, 2023
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge